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September 19, 2024

VIA ELECTRONIC SUBMISSION

Jarrett B. Perlow
Federal Circuit Court Clerk
717 Madison Place, NW
Washington, DC 20439
(202) 275-8000

Re: Lesko v. United States of America, Federal Circuit Case No. 23-1823
Letter re Notice of Supplemental Authority Per Fed. R. App. P. 28(j)

Dear Federal Circuit Court Clerk:

On behalf of Appellant Jillian Lesko in the matter of *Lesko v. United States*, Case No. 23-1823, scheduled for oral argument on October 9, 2024, I write pursuant to Fed. R. App. P. 28(j) to advise this Court of the decision by the United States Supreme Court in the matter of *Loper Bright Enterprises v. Raimondo*, 144 S.Ct. 2244 (2024), issued on June 28, 2024, after the appeal in the instant *Lesko* matter was fully briefed.

Appellant listed the pendency of the *Loper* case in the Statement of Related Cases sections of both her briefs. *See* Opening Brief at vii; Reply Brief at v. In *Loper*, the United States Supreme Court held that government agency regulations are not entitled to deference when a statute is ambiguous and that it is instead the role of the courts to resolve such statutory ambiguities, overruling *Chevron, USA, Inc. v. NRDC*, 467 U.S. 837 (1984).

Loper further bolsters Appellant's arguments here. At issue in this appeal, among other things, is Appellant's ability to seek overtime pay based on an inducement theory. *See* Opening Brief at 9-14; Reply Brief at 2-7. The relevant statute — 5 U.S.C. § 5542 — allows pay for overtime work when it is "officially ordered and approved." The Federal Circuit has held this statutory language permits an inducement theory of overtime. *See Mercier v. United States*, 786 F.3d 971, 982 (Fed. Cir. 2015); *see also Andersen v. United States*, 136 Ct. Cl. 365, 369-72 (1956). In this case, however, the court below held that an agency regulation, 5 C.F.R. § 550.111, which requires overtime to be authorized in writing, precludes Appellant's inducement theory. Appx005-006 (citing *Doe v. United States*, 372 F.3d 1347, 1362 (Fed. Cir. 2004), which relied on *Chevron* deference).

The *Loper* decision therefore further shows that, as already argued in Appellant's briefs, the courts' statutory interpretation of "officially ordered and approved" should control, that the statutory



language should be construed to permit an inducement theory of overtime, and that the courts' statutory interpretation should not be overridden by a contrary regulation. *See* Opening Brief at 9-14; Reply Brief at 2-7.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dimitrios V. Korovilas".

Dimitrios V. Korovilas, Esq.

CC: Kelly Geddes; Catherine M. Parnell; Michael S. Morrison; Jason M. Wucetich

CERTIFICATE OF SERVICE

I hereby certify that on September 19, 2024, I electronically filed the foregoing document described as follows with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following counsel for all parties who have registered for receipt of documents filed in this matter.

1. LETTER RE NOTICE OF SUPPLEMENTAL AUTHORITY PER FED. R. APP. P. 28(j)

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Dated: September 19, 2024

/s/ Dimitrios V. Korovilas

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